

In re) Fair Hearing No. 9420
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Appeal of)

The petitioner appeals the Department of Social Welfare's denial of emergency assistance to provide her with fuel for home heating and hot water.

1. The petitioner is an ANFC recipient who works in the summer and attends college full-time in the Fall.

2. Because she works, the petitioner files reports with DSW at the end of each month regarding the income she has earned. In early September, 1989, she reported income from her waitressing job in August, which when added to her ANFC check of \$623 per month, totalled about \$1,000.00 making her ineligible for an ANFC payment in September. The petitioner's only income in September was \$11.88 paid to her as her last earnings from her summer job. The Department does not dispute the petitioner's lack of income for September.

3. The petitioner lives with her two daughters, aged 14 and 11 in a house she rents from her parents for \$250 per month. She is responsible for the utilities which include electricity and oil for operating a unit which provides both hot water and heat. In addition, the petitioner has

provided to her a dormitory room at the college which she attends some 75 miles away. She uses that room two to three nights per week and commutes the other days. She is not allowed to have other persons residing in her dormitory room but can have guests for up to 3 days. On nights when she stays over at the college, her youngest child sometimes sleeps in her grandmother's bedroom in her house across the road (200 yards away).

4. If the petitioner had not been working, she would have received \$623.00 in ANFC for each of the months of August and September, 1989. Because of the retrospective budgeting feature of ANFC for working parents which resulted in the suspension of her grant for September, the petitioner was left with \$1,011.48 to cover regular expenses for both those months. In addition, the petitioner had extra expenses in September related to her and her children's school attendance, including clothing and car repair expenses. By September 24, the petitioner had run out of both oil for her furnace and money with which to buy it.

5. On September 26, 1989, the petitioner, hearing that cold temperatures had been forecast, applied in person at the Department for emergency assistance to buy a tank of heating oil.¹ At the time of the interview, the petitioner explained that the lack of heating oil resulted in both a loss of hot water to the building as well as heat. Both the

petitioner and the Department anticipated that she would be found eligible for ANFC for October once her monthly report form was filed and processed which would be between 7 and 10 days from that time. No discussion took place about the potential availability of other resources to avert the crisis and no specific information was requested with regard to the availability of her parents' home to the family or the feasibility of moving the family there in a crisis.

6. The petitioner was denied assistance to buy oil for her furnace based on the Department's belief that lack of heat was not an emergency at that time of year and the availability of other resources, namely, the home of the grandparents and the mother's dormitory room. The Department did not consider the loss of hot water an emergency qualifying for assistance. The District Director admitted that if it had been the middle of winter, the petitioner would not have been expected to move to her parents' home if she ran out of heating oil.

7. Between September 25, 1989 and October 3, 1989, the date of the hearing, the outside temperature at the petitioner's home reached the freezing mark on at least one occasion and was 54 degrees in the day time the day before the petitioner applied for assistance.

ORDER

The Department's decision is affirmed.

REASONS

The emergency assistance regulations provide, in pertinent part, that assistance can be granted to persons on ANFC if they:

. . .

4. Have emergency need; and:
5. Have exhausted all available income and resources except that:
 - a. Applicants who have available resources less than their need shall have the amount of the resources deducted from the G.A. grant.
 - b. Single individuals age 62 or over, or in receipt of SSI/AABD or social security based on blindness or disability, may have up to \$1,500 of available resources disregarded. A married couple, either of which meets the above criteria, may have up to \$2,250 of available resources disregarded. Only resources in excess of these amounts will be counted as "available" in determining eligibility or benefits for such persons, excluding eligibility and benefits payable relating to burial expenses (Section 2640 - 2648).
 - c. Resources which have been set aside in an escrow account for the purpose of paying property taxes or insurance shall be disregarded except as to their availability for payment of such intended expenses.

These criteria are not further defined in the regulations and, in fact, determinations are made with regard to these criteria on a case by case basis. In this case, the Department's determinations that lack of hot water in general and that lack of heat in the last week of September and first week of October are not emergency needs are found to be unreasonable. Similarly, with regard to the

provision of heat, the regulations do not define a heating "season". Here common sense must be used and a determination must be made whether it is likely that a family will need a heating source to keep their home in a healthful range (somewhere between 60 and 70 degrees) during any time period for which assistance is sought. While the Department knew that it could get cold, it was apparently assumed that the petitioner and her children would muddle through the sporadic cold days and nights. That attitude, however, is directly contrary to the purpose of these programs which is to ensure that people, and especially children, without means are not forced to live in conditions which, in the second half of the twentieth century in an affluent country, are generally considered substandard and unhealthful.

The second reason for the Department's denial, however, was its contention that the petitioner had resources available to meet her emergency need, namely relatives who lived nearby. In this regard, it must be concluded that the petitioner (who was represented by counsel) had the burden of establishing that she had "exhausted all available . . . resources" (see W.A.M. ¶ 2600(5), supra). Although the regulations regarding GA payments for fuel and utilities are silent on this question, other sections of the GA regulations--in particular, those concerning the provision of housing (see ¶ 2613 et seq)--specifically require individuals to exhaust potential alternatives, including

housing that can be "supplied by relatives, friends, community groups etc." See ¶ 2613.

It must be concluded, therefore, that it is not inconsistent or unreasonable for the department to require a similar exhaustion of potential alternative resources before granting GA for utilities. In other words, if the regulations require a family without housing to depend on relatives when this alternative is available, it is reasonable to expect individuals without fuel oil in early autumn to establish that they are unable to rely on nearby relatives for occasional washings and showers--or even for a place to sleep for a few nights if it is cold.

From the evidence presented, it cannot be concluded that the petitioner established that she had exhausted or had unavailable these potential alternative resources.² Therefore, the department's decision is affirmed.

FOOTNOTES

¹The petitioner also applied for food and assistance with her electric bill which she did receive.

²In retrospect, as the petitioner was almost certain to receive an ANFC check at the end of the first week of October, it might have been possible to easily resolve this problem by advancing the petitioner some of her check to cover this expense.